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Viewing cable 09BOGOTA3147, COLOMBIA'S PUBLIC BIDDING PROCESS COMES UNDER SCRUTINY

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Reference ID	Created	Released	Classification	Origin
09BOGOTA3147	2009-10-08 20:06	2011-08-30 01:44	CONFIDENTIAL	Embassy Bogota

Appears in these articles:

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VZCZCXRO0883
OO RUEHTRO
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RUEHCV/AMEMBASSY CARACAS 0103
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RUEHTRO/AMEMBASSY TRIPOLI 0001
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C O N F I D E N T I A L SECTION 01 OF 03 BOGOTA 003147

SIPDIS

E.O. 12958: DECL: 2019/10/08

TAGS: [ECON](#) [EINV](#) [ECPS](#) [MARR](#) [PGOV](#) [CO](#)

SUBJECT: COLOMBIA'S PUBLIC BIDDING PROCESS COMES UNDER SCRUTINY

CLASSIFIED BY: Brian A. Nichols, Deputy Chief of Mission, Department of State, Executive Office; REASON: 1.4(B), (D)

¶1. (C) SUMMARY. The September resignation of the National Concessions Institute Director, amid allegations of corruption, underscores the fragility and inconsistency associated with the bidding process on public projects in Colombia. Dealings with the Ministries of Transportation and Communications often leave international investors doubting the GOC's commitment to its stated goal of increasing direct foreign investment. While the GOC is still generally receptive to our advocacy efforts, passing the stalled U.S.-Colombian Trade Promotion Agreement (CTPA) has become the GOC's argument of choice as to how the USG can create better investment conditions for U.S. companies. We will encourage the GOC to join the WTO Government Procurement Agreement and offer U.S. Trade Development Agency assistance to bring Colombian bidding processes up to international standards. END SUMMARY.

CORRUPTION AT INCO UNDERMINES INFRASTRUCTURE PROJECTS

¶2. (C) On September 21, five senior officials from the Ministry of Transportation and the National Concessions Institute (INCO), including its Director, Alvaro Jose Soto, were forced to resign after recorded phone conversations implicated them in soliciting bribes in connection with the Central Magdalena railroad concession, which has been frozen pending an investigation. A group of U.S. investors from Montana had dropped out of the same railroad project because of what they described as: 1) an unrealistically short bid timetable; 2) unnecessary and inequitable qualification criteria established by INCO for the rail operator; and 3) an illogical amalgamation of construction and rail projects that created an irreconcilable dichotomy within the bidding consortium.

¶3. (SBU) Juan Martin Caicedo, President of the Chamber of Infrastructure, characterized the corruption scandal as yet another setback for Colombia's ailing infrastructure, which represents a huge brake on the economy. Caicedo told Econoff that Soto's replacement will be INCO's ninth director in six years in an industry where investments are long term and maintaining the same interlocutor is essential to build investor confidence.

TROUBLE GETTING SATELLITE BID OFF THE GROUND

¶4. (C) Colombia's bid for a satellite to support communications in remote areas (Ref B) has also experienced difficulties. The Ministry of Communications postponed public meetings with international bidders at the last minute (and after executives from various countries had already flown to Bogota) in mid-September. Press reports said the reason for the postponement was that the draft terms of reference favored two French companies with close ties to Libya, and this caused concern within other parts of the GOC. (NOTE: The meetings, which defined risk-sharing and solicited comments on the terms of reference, finally took place on September 29 and October 1. END NOTE.)

¶5. (SBU) The satellite bid process is unorthodox in that the GOC has not yet secured its orbital slot. As a result, U.S. and other satellite manufacturers will be forced to partner with service providers who can offer the slot. The GOC's need for a satellite

as well as a place to put it has distorted the Request for Proposal, since it requires technical as well as service commitments. This burden is exacerbated by the short timetable the GOC is requiring for bids.

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INACTION AND CORRUPTION AFFECT SUCCESSFUL BIDDERS

16. (SBU) Companies who win bids in Colombia have reason for caution as well. Scientific Games International (SGI), a U.S.-based lottery and gaming company won a bid in 1992 for a national instant ticket lottery. Due to factors beyond its control, SGI was unable to meet the sales level stipulated in its contract with ETESA (a company owned by the Ministry of Social Protection for the purpose of generating funds for the Ministry's public health-related functions). ETESA has refused to enter into arbitration as the contract requires and instead pursued litigation in multiple fora (including unsuccessfully in the U.S.). SGI is still trying to reach a negotiated settlement with ETESA in order to be able to eventually do business again in Colombia. SGI met with the Ministry of Social Protection and Econoff as recently as September 2009 to this end. As demonstrated by this case, the GOC does not always respect standard arbitration clauses in commercial contracts. This adds another level of risk and uncertainty for U.S. businesses considering investments in Colombia.

17. (C) Another U.S. company, GTECH, has had the concession with ETESA for a separate lottery for nine years. In exchange for allowing their secure terminals to be used to provide banking services to rural areas, GTECH asked that ETESA grant them an extension that is allowed in their contract. GTECH claims that a "colleague" (since fired) of ETESA's Director approached them for a bribe to ensure the extension was granted. Emboffs raised the issue directly with Vice President Santos.

MILITARY SALES NOT IMMUNE

18. (C) Multiple cases of irregularities in military tenders give reason for pause as well. One case involved the U.S. company, Textron, which was pursuing a \$100 million sale of tracked vehicles to the Colombian Army. Textron formally requested Embassy advocacy assistance when they could no longer secure meetings with the officials managing the tender and it became clear the army was considering a South Korean vehicle that had only been produced as a prototype and had not yet been tested. Textron eventually won the bid, but only after the USG raised concerns about the bid process at the highest levels. Subsequent to the award, retired Colombian Army officials offered \$10 million to the company's local representative to rescind Textron's bid.

STALLED FTA HINDERS ADVOCACY EFFORTS

19. (C) The GOC, particularly at more senior levels, is generally receptive to Embassy's advocacy on behalf of U.S. companies. Nonetheless, we have begun to receive push-back in the form of GOC indignation at the U.S. lack of action on the U.S.-Colombia Trade Promotion Agreement (U.S.-CTPA). During a recent meeting with Trade Vice Minister Gabriel Duque, Emboffs expressed concern over a bill in Colombia's Congress, backed by domestic TV networks that would impose stiff taxes on international television companies and prohibit them from advertising in Colombia. Duque, who served as Colombia's services negotiator for the U.S.-CTPA responded, "We know this law violates our FTA commitments. But until you pass the FTA, this law is Colombia's prerogative."

STEPS TO STRENGTHEN PUBLIC BIDS

¶10. (C) Colombia is not a signatory to the WTO Government Procurement Agreement, which could improve its performance in executing international tenders. We will encourage Colombia to join the Agreement, underscoring its benefits in promoting foreign direct investment--a key goal of President Uribe. We will continue to offer assistance through the U.S. Trade Development Agency and other mechanisms to improve transparency and bring the Colombian bidding process more in line with international standards.

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